on appeal, that a new executory contract which includes the settlement of the original claim, is not a mere accord, but is the substitute for the original claim or contract, which is merged in it, and may be specifically enforced in a proper case. *Moers v. Moers* (1920, N. Y.) 128 N. E. 202.

This case in the lower court was criticised adversely in (1919) 29 YALE LAW JOURNAL, 114. For a discussion of similar points involved, see (1920) 29 *id.* 924.

CONTRACTS—OPTIONS—REVOCATION OF AN "EXCLUSIVE AGENCY TO REAL ESTATE."—The plaintiffs had by written agreement secured the exclusive agency to the defendant's real estate for forty days, during which time the defendant himself sold it and gave notice to the plaintiffs. The latter brought this action for their commission. *Held,* that the agreement was revocable and that the plaintiffs were not entitled to commission. *Beck v. Howard* (1920, S. D.) 178 N. W. 579.

The question involved is not really a question of agency but one of contracts. The court had to decide whether this was an offer, revocable or irrevocable, or whether it was a contract complete. See COMMENT (1919) 28 YALE LAW JOURNAL, 575.

CRIMINAL LAW—JURISDICTION OF FEDERAL COURTS—EFFECT OF ABSENCE OF PENALTY IN THE FOOD CONTROL ACT.—The defendant, a retail grocer, was charged with selling sugar at an unfair rate, in violation of section four of the Food Control Act of August 10, 1917. The defendant pleaded guilty and was convicted. *Held,* on appeal, that the indictment did not charge a criminal offense, because the Act prescribed no penalty for its violation. *Mossew v. United States* (1920, C. C. A. 2d) 266 Fed. 18.

See COMMENTS, *supra,* p. 81.

PROPERTY—EASEMENTS—RIGHT TO WATER FROM SPRING AS EASEMENT IN GROSS—MERE NON-USER NOT AN ABANDONMENT.—A grant was made of the privilege to take water from a spring, the grantors covenanting that they would not sell to others such privilege or take water themselves "to supply any persons that the parties acting under this deed will supply" except by agreement of all parties interested. There was evidence of non-user for many years. *Held,* that the privilege still existed, but did not pass merely by a conveyance of the grantee's land. *Clement v. Rutland Country Club* (1920, Vt.) 108 Atl. 843.

The court held that the "right" was a profit á prendre, which is always assignable or devisable, and that since the parties contemplated the sale of water, it was not appurtenant to any land and hence was in gross. This seems a correct interpretation of the intention of the parties. See, however, *Chase v. Cram* (1916) 39 R. I. 83, 97 Atl. 481, L. R. A. 1918F, 444, note, where a conveyance by a father to his daughter of part of his farm, with "a privilege to take water from the spring on my farm as occasion may require," was held appurtenant, so that she could not sell the water from the spring. As to profits in gross or appurtenant, see (1919) 29 YALE LAW JOURNAL, 218; (1920) *id.* 696. The court in the instant case also holds what, in spite of some conflict, is the better rule, that a servitude is not lost by mere non-user. An intention to abandon is requisite and this is not to be inferred from such non-user alone. See *New York Central & H. R. Ry. v. City of Chelsea* (1912) 213 Mass. 40, 99 N. E. 455; *Pratt v. Sweetser* (1878) 68 Me. 344.

PROPERTY—EASEMENTS—PRESCRIPTIVE RIGHT OF WAY TO WATER AS EASEMENT IN GROSS.—Claiming a right of way through a passway over defendant's land from the highway to a water course as an easement appurtenant to each of their tracts of land, used under a claim of right for more than the pre-